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Committee against Torture
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Summary record (partial)* of the 1304th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 29 April 2015, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Serbia

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Mr. Ilic** (Serbia), introducing the State party's report, said that under the Constitution, the general provisions of international law and the eight international treaties ratified by Serbia had been made an integral part of and were directly applied in the national legal system.

3. Serbia had recently taken over the chairmanship of the Organization for Security and Cooperation in Europe and had been actively involved in the protection and promotion of human rights and fundamental freedoms. As a member of the Council of Europe, Serbia had ratified several human rights conventions, including the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. As a candidate country for European Union accession, Serbia had also begun the process of legal and institutional reform, which included the adoption of the rule of law and the protection and promotion of human rights.

4. It should be noted that Serbia had been unable to monitor the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Kosovo and Metohija. Pursuant to United Nations Security Council resolution 1244 (1999), administration of that province had been mandated to the United Nations Interim Administration Mission in Kosovo (UNMIK). Serbia called on the Committee to invite UNMIK to submit a parallel report on the application of the Convention in Kosovo and Metohija, and Serbia would be willing to share information to facilitate that process.

5. As part of its judicial reform process, the Government had introduced new legislation and established the High Council of the Judiciary and the State Prosecutorial Council to oversee the selection, nomination and dismissal of judges, presiding judges and prosecutors, and to implement measures to ensure the effectiveness of the courts and offices of the public prosecutor. The Government was also committed to strengthening and streamlining the regulatory and institutional framework and bolstering judicial cooperation and capacity in order to actively prevent and combat crime. The National Judicial Reform Strategy for the period 2013–2018 had been introduced to enhance judicial independence, transparency and efficiency. An action plan was being drafted with input from the European Commission to prepare for future legal reforms and pave the way for accession to the European Union.

6. New legislation and a national plan of action to tackle discrimination had been adopted. Various initiatives had also been introduced to prevent and combat gender-based violence against women, including, among others, a national strategy for preventing and combating domestic violence, a general protocol on inter-agency cooperation in cases of domestic violence, and a series of institutional mechanisms, standards and procedures.

7. In order to reduce crime and reoffending rates, overhaul the detention system and assist the resettlement of convicted persons, a national plan of action on the enforcement of penal sanctions had been launched in August 2014, which contained specific measures to address prison conditions and overcrowding, establish new treatment and training

programmes for inmates, improve prison staff training, promote alternative measures to imprisonment and enhance oversight and monitoring mechanisms.

8. Cases of potential torture and other cruel, inhuman or degrading treatment alleged by prisoners had to be recorded and investigated promptly in order to initiate disciplinary proceedings against the employee responsible or, if reasonable grounds had been established, file a criminal complaint. A complaints mechanism for prisoners had been established under the Law on Enforcement of Penal Sanctions in 2006, which had been amended in 2014 to introduce the requirement for judges to monitor the application of such sanctions as an additional layer of protection for prisoners' rights. Judges visited the institutions under their jurisdiction and ruled on any complaints filed by prisoners, imposing disciplinary sanctions or opening criminal proceedings in cases of abuse or torture by prison staff.

9. Pursuant to the Law Ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2011, external oversight of criminal sanctions had been assigned to the Ombudsman as the country's national preventive mechanism. The Ombudsman cooperated with regional advocates and civil society organizations engaged in the promotion and protection of human rights. Representatives of the latter also had the right to speak with prisoners in private, visit correctional facilities and access the documentation needed to monitor the system.

10. A State-funded centre had been established to provide and coordinate emergency care and support for victims of human trafficking. The social care system also provided victims with access to financial assistance and other services, accommodation and psychological support. Serbia was in the process of adopting a national strategy for the period 2015–2020, along with a related action plan on preventing and suppressing trafficking in persons, particularly women and children, and protecting victims.

11. Full protection and support had normally been provided to all refugees, of which there were currently some 44,000, as well as to 220,000 displaced persons. Internally displaced persons from Kosovo and Metohija had been accorded full rights in Serbia and the Government had established institutional frameworks and support mechanisms. However, 16 years on, suitable conditions for their return to Kosovo and Metohija had not been achieved. There were various barriers preventing their long-term resettlement, including the dire security situation and criminal behaviour toward minority communities and returnees, many of which had reportedly gone unchecked by the competent authorities. Serbia once again called on the Committee to seek further information in that regard from UNMIK, as well as on the issues raised in a Council of Europe report citing inhuman treatment and forced disappearances perpetrated in the course of an organ trafficking operation.

12. Asylum seekers were provided with all basic services as well as free legal assistance, psychosocial support and access to translators. A new crime had been established in the Criminal Code to reduce the number of false asylum seekers, and those found to have been transporting false asylum seekers could be prosecuted and imprisoned for up to 8 years, depending on the gravity of the offence.

13. Serbia had been cooperating with the International Criminal Tribunal for the Former Yugoslavia and had so far approved all 2,160 requests for access to documentation and witnesses. Access to the State archives had also been granted to the prosecution and defence on 50 occasions so far. In relation to the War Crimes Prosecutor's Office, a series of measures had been undertaken to build capacity, to establish a priority list for war crimes cases awaiting trial, to ensure full access and cooperation with the international criminal

tribunals and to provide training on international humanitarian law and criminal investigation to the appropriate personnel.

14. **Mr. Tugushi** (Country Rapporteur) said that the definition of the crime of torture in the Criminal Code was not consistent with article 1 of the Convention. Of particular concern was the fact that the statute of limitations had not been repealed for crimes involving torture. Information should be provided on why no amendment had yet been made and whether there were plans to introduce a separate article defining torture in the Criminal Code.

15. He said that the Committee welcomed the introduction of the new Criminal Procedure Code and the standards and safeguards provided for the prevention of torture and ill-treatment of persons deprived of liberty. However, the Committee had received reports that the registration of persons in detention was not always properly completed. There had also been complaints that State-appointed lawyers often arrived late if at all. Sometimes they only appeared at the initial hearing and many tried to convince defendants to confess. Was the State party taking action to investigate and remedy those deficiencies in the system?

16. Screening of injuries on entry into detention facilities had not been carried out properly or had been superficial at best. Law enforcement officials had often been present during medical examinations; statements had not always been taken from detainees and, in the absence of thorough screening, doctors could not arrive at conclusions on the causes of injury. It would be useful to know whether the Government had taken steps to rectify those failings and issue directives to ensure that improvements would be applied consistently.

17. The Committee had been made aware of cases of police brutality occurring at the time of arrest or questioning. Physical violence had reportedly been used on occasions to obtain confessions. The number of investigations and disciplinary procedures launched seemed relatively low compared with the number of complaints received. The Ombudsman had also complained that such investigations were lengthy, inefficient and often led to no conclusion. He also said that it was likely that the superficial nature of the medical examinations had affected the outcome of investigations.

18. **Mr. Tugushi** asked whether sufficient human, material and financial resources had been made available to the Ombudsman in his new function as the national preventive mechanism and whether steps had been taken to ensure he had full access to the information required for the effective investigation of alleged cases of torture or ill-treatment. Noting the delays in the processing of asylum applications, he wished to know whether efforts would be made to strengthen the capacity of the Asylum Division and document the deprivation of liberty of persons held at Belgrade International Airport. He also requested information on the measures taken by the State party to ensure that applications for asylum by persons from States, to which the concepts of "safe country of origin" and "safe third countries" applied, were examined with due consideration for the applicant's personal situation and in full conformity with the provisions of article 3 of the Convention. Similarly, he enquired as to whether action would be taken to ensure that cases of trafficking in persons were properly investigated, prosecuted and punished without undue delay and legislation was implemented to prevent the prosecution of victims for offences linked to trafficking. He also asked whether the State party intended to train labour inspectors in the identification of trafficking victims and increase the amount of funding provided to NGOs and shelters that supported victims.

19. In regard to reports of overcrowding in places of detention, he requested updated information on the occupancy rate of all prisons, including the amount of space in terms of square metres provided for each detainee. He also wished to know what measures had been adopted to address the acute shortage of health-care personnel and the lack of mental health-care provision in prison establishments. In addition, he asked about the frequency of

inter-prisoner violence, including any cases involving possible negligence on the part of the law enforcement personnel, and the number of complaints made in that connection. What preventive measures had been taken to reduce incidences of that nature? Lastly, he wished to know how many complaints of torture against detainees in high security units had been investigated, prosecuted and appropriately punished and what changes had been made to the functioning of such units as a result.

20. **Ms. Pradhan-Malla** asked what steps had been taken to ensure that information regarding the prohibition of torture had been fully included in the training of law enforcement personnel and whether such training was gender-sensitive and conducted on a regular basis. She also requested detailed updated statistical data, disaggregated by crime committed, age, sex and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as on reported deaths in custody according to place of detention, sex, age, ethnicity of the deceased and cause of death. Information on the results of the investigations in respect of those deaths and measures implemented to prevent suicides and other sudden deaths in detention centres would also be welcome. What action had been taken to address the disproportionately high number of deaths and suicides of women detainees in prisons and psychiatric hospitals and establish women-friendly prisons?

21. Noting the high number of persons with disabilities and older persons in institutions, she asked whether there were plans to increase the amount of support available to enable those persons to live independently in the community. She also wished to know what steps had been taken to investigate, prosecute and sanction war crimes and past human rights violations and address deficiencies in the witness protection system. Lastly, she wished to know what measures had been implemented to provide compensation and rehabilitation for victims of torture and ill-treatment, and would appreciate information on the amount of national budget allocated to such reparation efforts.

22. **Mr. Bruni** asked what initiatives had been introduced to tackle the high occupancy levels and poor conditions of police holding cells and increase the health-care resources available in prisons, in the light of the recommendations made by the Ombudsman in his 2013 report and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Serbia in November 2007.

23. **Ms. Belmir** asked whether the judicial police received regular, up-to-date training on the provisions of the Convention. She also wished to know what steps had been taken to appropriately investigate, prosecute and sanction law enforcement officers found guilty of torture or ill-treatment, and particularly of offences against vulnerable groups of the population. In that connection, she enquired as to the efforts made to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably members of the Roma community, women, persons with intellectual and psychosocial disabilities and children. Lastly, she asked what action would be taken by the State party to strengthen its cooperation with the International Criminal Tribunal for the Former Yugoslavia, including by tracking down and handing over the two remaining indictees, Ratko Mladić and Goran Hadžić.

24. **Mr. Domah**, commending the State party on the inclusion of two judges in its delegation, said he would welcome information on the composition of the High Council of the Judiciary, the grounds that the disciplinary bodies appointed by the Council used to decide when to take disciplinary action, whether there was a code of conduct for the judiciary and whether any related sanctions had been imposed in the recent period. In the context of the training provided by the Judicial Academy, it would be interesting to know whether there was a mandatory professional development programme, if judges were trained to take decisions on allegations of torture and to whom such allegations could be made. The training course on the Convention was worthy of note, but had been held only

once. Had it been repeated and was any regular training offered, particularly for new appointees? Although the Academy came under the aegis of the Ministry of Education, it was important that the content of its curricula should be decided by the head of the judiciary, not the executive powers. Finally, he would like to know how many judicial investigations and subsequent prosecutions had been carried out into deaths in custody.

25. **Mr. Modvig** said that the fact that the prison health-care system reported to the Ministry of Justice presented some ethical dilemmas. He asked what had been done to implement the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that the Ministry of Health should take a more active role in ensuring quality control of prison health care. With reference to the United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that concerned the obligation on medical professionals not to engage in torture or ill-treatment even passively, were medical staff given training and information on that issue and had sanctions been imposed for breaches of those standards? He asked whether the medical examination on a detainee's entry into prison was conducted without the presence of police or prison officers, medical confidentiality was ensured, to whom doctors should report any allegations or signs of torture and how many such cases had been reported during the period in question.

26. **Ms. Gaer** said she would welcome information on the discovery in 2013 of a mass grave in Rudnica, which would be the first case to be prosecuted in the national courts. NGOs had expressed concern that the State party had not opened up archives that might provide assistance in locating other such graves, even for the War Crimes Prosecutor; she would like to know whether the archives were now open, whether anyone had been charged with concealment and what, in light of the fact that 12,000 persons were still missing since the 1999–2002 conflict, the State party planned to do to respond to the accusations of inaction on its part.

27. Reports stated that the number of murders of women was increasing, with no commensurate action being taken, and the high proportion of suspended sentences imposed when prosecutions did occur might indicate that the State party was not taking the matter seriously. She would be interested to know what emergency protection measures were available to women under threat. Furthermore, the table showing the sources of information on domestic violence indicated that a large percentage of the tip-offs concerning child victims came from the Ministry of Internal Affairs; it would be interesting to know whether the sources were police officers.

28. **Mr. Zhang** said that he would welcome the delegation's comments on reports that, given the scale of the crimes allegedly committed by Serbian forces during the conflict in the 1990s, the number of domestic prosecutions for war crimes was extremely limited; that protected witnesses had been ill-treated by the Witness Protection Unit; and that the State party had failed to guarantee the enforceable right to reparations. In that connection, were international conventions and other instruments being faithfully fulfilled in Serbia? It would be helpful to have updated information on the claims for redress for non-pecuniary damage from victims of torture or from their families, and examples of redress being awarded in the absence of a judgement, penal sanction or disciplinary measure against the perpetrator.

29. **Mr. Gaye** said he would like clarification on the right of detainees to request an independent medical examination on entry to a prison; did it mean that the detainee could freely choose the doctor? Since the programme to combat trafficking had ended in 2009, he thought it likely that a new programme was being developed, but it would be helpful to know whether an evaluation of the previous one had been conducted. With reference to asylum requests, the concepts of "safe country of origin" and "safe third countries" and

diplomatic assurances, he enquired how the State party fulfilled its obligation under article 3 of the Convention to consider each case individually in order to ensure that a person was not returned to a country where torture was a risk. The delegation should explain the mention in the table in paragraph 51 of the periodic report, under repatriation, extradition and expulsion of asylum seekers, concerning cases of "residence permit revoked", as presumably such permits could only be revoked after a definitive decision had been taken in each case.

30. **The Chairperson** said he welcomed the signing by Serbia of a memorandum of cooperation with the Mental Disability Rights Initiative and wondered to what extent it had been implemented. Additional information on the damages awarded to victims of torture would be helpful, as would clarification, with statistics, on when the appointment of a defence counsel was optional. The reference to the article of the Criminal Procedure Code that guaranteed interpretation services to persons deprived of liberty appeared to be incorrect; clarification would be appreciated. It would be useful to know whether Serbia had any bilateral or regional agreements on trafficking in persons and whether any asylum seekers were being held in detention and for what reason.

31. The translation of brochures for detainees into the Romani language was a welcome development; it would be interesting to know how many copies had been made available. There were reports of discrimination against Roma persons in Serbia, with some being denied access to an emergency reception centre in Belgrade during the floods in May 2014 and others still living in inadequate metal containers because of delays in resettlement programmes; explanations of those cases would be appreciated. Further information, with details of immediate measures adopted, would be appreciated on action taken in the case of the attack on a participant at an international conference on lesbian, gay, bisexual, transgender and intersex rights, as would updated information on cases brought against public officers on allegations of torture, the appellate proceedings related to the death of the person referred to as M.P. in a correctional institution in 2005, the progress of charges brought by the Public Prosecutor in Novi Pazar on 26 June 2009 that had been referred back to the court of first instance for retrial, and any cases of torture or ill-treatment of persons with disabilities in social protection institutions. Information had been received that amendments were to be made to the Criminal Procedure Code to allow the public prosecutor to decide not to proceed to investigations in cases of ill-treatment and torture, but rather to institute summary proceedings; had that provision been applied? It was also unclear whether, in cases where the prosecutor rejected the criminal report, the injured party could challenge the decision in court, given the changes to the Code of Criminal Procedure preventing such a party from becoming a subsidiary prosecutor.

32. **Mr. Tugushi** said he would like to know why, since alternatives to pretrial detention were now available, many persons were still being held in custody. Information would also be appreciated on progress made with reintegrating children with disabilities and persons with mental health issues into the community, as the numbers held in specialized institutions were still very high.

33. **Ms. Pradhan-Malla** said that she would like information on the protection measures that existed for human rights defenders and clarification on the restraints used on persons who had attempted to commit suicide.

The discussion covered in the summary record ended at noon.